

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Request by Otter Tail Power
Company for Approval of an Affiliated Wind
Power Purchase Agreement, Wind Acceleration
Tariff, and Related Matters

ISSUE DATE: September 29, 2005

DOCKET NO. E-017/AI-05-652

ORDER REQUIRING ADDITIONAL
INFORMATION AND DEFERRING
CONSIDERATION OF MERITS

PROCEDURAL HISTORY

On April 29, 2005, Otter Tail Power Company (OTP or the Company) requested that the Commission 1) approve a Power Purchase Agreement (PPA) for the sale and purchase of 70.5 MW of wind energy; 2) approve a Wind Acceleration Tariff; 3) grant a variance to its fuel clause adjustment (FCA); and 4) determine that the purchase of the wind energy will count towards OTP's renewable energy objective (REO) under Minn. Stat. § 216B.1691.

On June 1, 2005, the Minnesota Department of Commerce (the Department) filed comments raising significant concerns about the effects of the Company's proposal. The Department recommended that the Commission deny OTP's petition.

Also on June 1, 2005, Minnesotans for an Energy Efficient Economy (ME3) and the Minnesota Center for Environmental Advocacy filed joint comments addressing solely the REO issue. They stated that they do not see the proposed PPA as the type of "green pricing" arrangement that the Commission has precluded from counting towards the REO.

On June 13, 2005, OTP filed reply comments asserting that the Department misunderstood the nature of the Company's proposal. The Company argued that the Department's recommendations were inconsistent with the Commission's finding in the REO Order that in implementing the state's renewable energy objectives regulators and utilities need to be flexible and creative.

On June 20, 2005, Enbridge, Inc. filed comments recommending that the Commission accept OTPs' Reply Comments and approve the Company's petition as originally filed.

On July 12, 2005, the Department filed supplemental comments clarifying its view that OTP's ownership of the project's environmental attributes is not determinative of whether the proposed arrangement is green pricing. In all respects, the Department supported the recommendations it made in its original comments.

The Commission met on September 8, 2005 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Summary

Based on the record to date, the Commission can decide only one of the issues raised in OTP's petition: whether OTP's purchase of wind energy under the PPA would count towards OTP's renewable energy objective (REO) under Minn. Stat. § 216B.1691.

Based on the analysis presented in Section II below, the Commission concludes that if it eventually approves the proposed PPA, any wind purchased under that PPA will count towards OTP's renewable energy objective (REO) under Minn. Stat. § 216B.1691.

That issue aside, the Department and Commissioners have raised significant concerns about the underlying project itself that have not yet been resolved. The Commission has issued a NOTICE SEEKING RESPONSES and will require OTP to provide the requested information before considering the merits of OTP's proposed PPA, variance request, and tariff at a future meeting.

II. REO Issue

A. Background

The commenting parties (OTP, the Department and ME3/MCEA) acknowledged that the Commission's ORDER AFTER RECONSIDERATION in the REO Docket¹ appeared to generally prohibit counting green energy programs toward REO goals.

B. The Department

The Department stated that the PPA was green pricing and hence apparently within the prohibition established in the ORDER AFTER RECONSIDERATION in the REO Docket.² The Department also stated, however, that the Commission could decide on policy grounds to make an exception to its ORDER AFTER RECONSIDERATION and allow OTP to count purchases under the PPA toward its REO goals.

C. OTP and ME3/MCEA

OTP and ME3/MCEA argued that the PPA was either not green pricing or was not the type of green pricing that the Commission had in mind when it issued the ORDER AFTER RECONSIDERATION in the REO Docket. They argued, therefore, that the Commission could and should allow purchases under the PPA to count toward the Company's REO goals.

¹ *In the Matter of Detailing Criteria and Standards for Measuring an Electric Utility's Good Faith Efforts in Meeting the Renewable Energy Objectives Under Minn. Stat. § 216B.1691*, Docket No. E-999/CI-03-869, ORDER AFTER RECONSIDERATION (August 13, 2004), hereinafter referred to as the ORDER AFTER RECONSIDERATION.

² ORDER AFTER RECONSIDERATION.

D. Commission Analysis and Action

As the Commission noted in its ORDER AFTER RECONSIDERATION, the REO statute leaves it to the Commission to determine whether counting green pricing energy toward the renewable energy objectives is consistent with the public interest and the policies underlying the Public Utilities Act.³

Examining the PPA proposed in this matter from the standpoint of eligibility for the Company's REO goals, the Commission agrees that the PPA does not have the features that led the Commission to conclude that green pricing programs should not count toward REO goals.

In its ORDER AFTER RECONSIDERATION, the Commission reached a decision based on policy considerations. The Commission concluded that excluding green pricing energy in measuring compliance with the renewable energy objectives is more consistent with the public interest and the goals of the Public Utilities Act than including it. As the touchstone for its public interest analysis, the Commission stated:

Sustaining this program and ensuring its future viability are goals and responsibilities of this Commission.⁴

The Commission then identified several reasons why allowing a green pricing program to count towards a utility's REO goal would jeopardize the success, effectiveness, and future of the green pricing program. Among the concerns identified were: 1) potential to reduce program participation; 2) complicating an already complex marketing system; 3) pressures for increased accountability; 4) increased potential for customer confusion; and 5) increased administrative difficulty.

The Commission's analysis and conclusion remain sound as applied to green pricing programs in general. In the present case, however, there is just one customer (Enbridge, a sophisticated customer), and that customer is pursuing the project primarily as a financial hedge against what it sees as the less than stable costs of fossil fuels rather than due to a commitment to the green characteristic of the energy to be provided. In addition, the environmental attributes that are now or could become commodities separate from the delivered energy (such as green tags, emissions credits, or renewable energy credits) would belong to OTP in this transaction and not to Enbridge as the retail customer.

In these circumstances, to the extent that the PPA is a variety of green pricing, the PPA is clearly not the common type of green pricing program that the Commission contemplated when it issued its ORDER AFTER RECONSIDERATION. The reasons cited by the Commission for not allowing a utility to count generation purchased under green pricing programs towards its REO goal do not apply to the OTP/Enbridge PPA.

Accordingly, the Commission will recognize the OTP/Enbridge PPA either as not covered by the ORDER AFTER RECONSIDERATION or as an appropriate exception to the general decision made in that Order. The Commission concludes that, if it eventually approves the PPA in question in a future Order, the wind energy purchased pursuant to the PPA would count towards OTP's renewable energy objective (REO) under Minn. Stat. § 216B.1691.

³ Supra at page 9.

⁴ Supra at page 8.

III. Future Steps

The Department and Commissioners have raised significant concerns about the merits of the underlying project itself, however, and these concerns have not been resolved to date.

On September 20, 2005, the Commission issued a NOTICE SEEKING RESPONSES from OTP. The NOTICE listed questions identified by the Department, staff of the Commission, and by Commissioners themselves which go to the merits of OTP's petition. In this Order, the Commission will direct OTP to provide information responsive to those requests.

ORDER

1. Otter Tail Power Company (OTP or the Company) shall respond to questions identified by Commission Staff, the Department, and Commissioners and conveyed to the Company in a NOTICE SEEKING RESPONSES, dated September 20, 2005. A copy of that NOTICE is attached and incorporated into this Order Paragraph by reference.
2. Consideration of the merits of OTP's request for approval of its proposed PPA variance, and tariff is deferred to allow appropriate development of the record on these issues.
3. The Commission concludes that, if in a future Order it approves the PPA proposed by OTP in this matter, the wind energy purchased pursuant to the PPA would count towards OTP's renewable energy objective (REO) under Minn. Stat. § 216B.1691.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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